

No. 2:10-cr-00054-BO-1

## ORDER

Background:

Arguments:

Boone contends that the range for her sentence under the United States Sentencing Guidelines (“Guidelines” or “U.S.S.G.”) was lowered by the retroactive Amendment 791 that went into effect on November 1, 2015. See [D.E. 102, 103] at 1. Boone further asserts she is entitled to an adjustment of her term of imprisonment because, under tax table section 2T4.1, her offense level has been reduced from 22 to 20. See id. at 2.

The Government argues Boone is not entitled to relief because: 1) her guideline range was determined pursuant to losses under U.S.S.G. § 2B1.1, not the tax table in section 2T4.1; and 2) Amendment 791 is not one of the amendments referenced in U.S.S.G. § 1B1.10(d) that provides an avenue for lowering a sentence under 18 U.S.C. § 3582(c). See Resp. Opp'n [D.E. 106] at 1–2.

Discussion:


A court may modify or reduce a term of imprisonment if the defendant was “sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. [§] 994(o).” 18 U.S.C. § 3582(c)(2). However, a defendant is not entitled to the benefit of a subsequent substantive Guidelines amendment unless the Sentencing Commission designated the amendment for retroactive application. See Dillon v. United States, 560 U.S. 817, 824–25 (2010); United States v. Goines, 357 F.3d 469, 474 (4th Cir. 2004).

Here, Boone’s combined adjusted offense level for guideline sentencing relied upon the loss tabulated under U.S.S.G. § 2B1.1 with various adjustments (Count One) rather than on the loss tabulated under the tax table in section 2T4.1 (Count Three). See Revised Pre-sentence Report (sealed) [D.E. 86] at ¶¶ 49–71. Further, although Amendment 791 amended U.S.S.G. § 2B1.1, this amendment was not designated for retroactive application. See U.S.S.G. § 1B1.10(d). Accordingly, Boone is not entitled to a modification of her sentence pursuant to Amendment 791.

Conclusion:

For the reasons discussed above, the court DENIES the motions [D.E. 102, 103].

SO ORDERED. This 8 day of November 2018.

  
TERRENCE W. BOYLE  
Chief United States District Judge